IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
**REVIEW PETITION NO. 64 OF 2007**
**IN**
**WRIT PETITION NO. 580 OF 2007**

Mr. Anees Ahmed ... Petitioner

versus

Subhash R. Acharya and others ... Respondents

Mr. Nitin Pradhan with Ms. S.D. Khot, instructed by Ms. Hemani Jhariya, for the petitioner.

Mr. Ravi Nakhwa with Mr. Vasant B. Dhawan for respondent No.1.

Mr. R.J. Mane, Assistant Government Pleader, for respondent Nos. 2,4 and 5.

Mr. S.U. Kamdar with Mr. Bipin Joshi for respondent No.3.

**CORAM**: **SWATANTER KUMAR, C.J.** &
**SMT. RANJANA DESAI, J.**
**DATE:** **DECEMBER 07, 2007**.

**P.C.**

Vide our judgment dated 16th August, 2007, we have disposed of Civil Writ Petition No. 580 of 2007 and issued certain directions in the judgment. The applicant has filed the present review petition praying that the judgment be reviewed and the petition be dismissed.

2. The main ground raised by the applicant before us is that in paragraphs 6 and 7 of the judgment, facts have been recorded which

are not correct and any interference drawn upon such facts needs to be recalled and consequently the writ petition ought to have been dismissed by the Court. According to the learned counsel appearing for the applicant, during the course of hearing, on 25th June, 2007 an affidavit was tendered in Court but was taken back in view of the statement made that respondent No.2 may like to consider the possibility of reviewing his decision. According to him, recording of the finding that respondent No.6 did not specifically dispute the allegations and did not file an affidavit are erroneous. We are unable to accept this contention. Firstly, such an application would be beyond the purview and scope of the provisions of Order 47 of the Civil Procedure Code and, in any case, it is without substance and merit. It is even conceded before us that the affidavit which was tendered during the course of hearing on 25th June, 2007 had been taken back on the request of the learned counsel appearing for the said respondent and the same never formed part of the judicial file. Once a document is withdrawn even before it is ordered to be taken by the order of the Court on judicial record, the same ought not form part of the judicial file. In any case, that affidavit , at no point of time on any subsequent hearing as the judgment was reserved on 24th July, 2007, was never tendered again. On the contrary, respondent No.6 had issued a letter

subsequently reviewing his decision and the order of review had been filed in the Court. From these undisputed facts appearing from the record, it is clear that even the averments made in the application are factually incorrect.

3. It has been brought to the notice of the Court, during the course of hearing of this application, that respondent No.3 in the main writ petition has already filed a Special Leave Petition, being Special Leave Petition (Appeal) No. 17756 of 2007, against the judgment and order dated 16th August, 2007, which is still pending before the Supreme Court. On this premise, even an objection is taken as to the maintainability of the present review petition. Having dealt with the application on merits, we leave this question unanswered.

4. For the above reasons we see no reason to review or recall our order dated 16th August, 2007. This application is accordingly dismissed.

**CHIEF JUSTICE**

**SMT. RANJANA DESAI, J.**